CHARLES R. BRUCKS, JR.

IBLA 83-557 Decided April 20, 1984

Appeal from decision of Wyoming State Office, Bureau of Land Management, disqualifying simultaneous oil and gas lease application and barring participation in future drawings.

Affirmed.

1. Accounts: Fees and Commissions--Oil and Gas Leases: Applications: Drawings

Under 43 CFR 3112.2-2 (1982), BLM properly disqualifies simultaneous oil and gas lease applications submitted with uncollectible filing fees and requires payment of the debt as a condition for further participation in the simultaneous leasing program even where an applicant substitutes a collectible remittance after the filing period but prior to the simultaneous oil and gas lease drawing.

APPEARANCES: Charles R. Brucks, Jr., pro se.

OPINION BY ADMINISTRATIVE JUDGE MULLEN

Charles R. Brucks, Jr., has appealed from a decision of the Wyoming State Office, Bureau of Land Management (BLM), dated April 5, 1983, disqualifying his simultaneous oil and gas lease application and barring his participation in future simultaneous oil and gas lease drawings.

On March 16, 1983, appellant executed Part B of an automated simultaneous oil and gas lease application form (Form 3112-6a (June 1981)), covering two parcels in the March 1983 simultaneous oil and gas lease drawing, CO-107 and CO-196. The application was forwarded to BLM with a check (No. 168), dated March 18, 1983, in the amount of $150 drawn on the Dade Savings and Loan Association of Orlando, Florida, to cover the filing fees in accordance with 43 CFR 3112.2-2(a) (1982). In its April 5, 1983, decision, BLM disqualified appellant's lease application because appellant's check was returned to BLM "as uncollectible because of payment stopped," and was therefore deemed to be an "uncollectible remittance" under 43 CFR 3112.2-2(c) (1982). In addition, BLM stated that the $150 (along with a $10 service charge) constituted an outstanding debt to the United States which must be paid before appellant would be allowed to participate in future drawings.

In his statement of reasons for appeal, appellant states that "[o]n March 29, 1983," he talked to Cathy Cooney, a BLM employee, informing her that he "intended to put a stop on the $150 check * * * and [to] replace the check with a postal money order." Appellant further states that Ms. Cooney told him that there would be no problem with this procedure, and that he thereafter stopped payment on the check and sent the postal money order. 1/ Appellant contends that his payment should be considered "timely," and, in the alternative, challenges retention of his filing fees.

By order dated November 22, 1983, the Board, in part, allowed appellant additional time to submit proof that he had purchased and forwarded a postal money order to BLM, because there was no evidence in the record. On December 2, 1983, appellant submitted a customer receipt of the U.S. Postal Service, dated March 29, 1983, in the amount of $150. The receipt indicates, in handwriting, that the money order was payable to BLM for parcels CO-107 and CO-196 in the March 1983 drawing. 2/ On January 11, 1984, appellant submitted a photocopy of the canceled postal money order, which indicates that it was posted by BLM on April 5, 1983, and thereafter deposited.

On January 9, 1984, BLM submitted a response to appellant's statement of reasons in which it states that appellant's postal money order was received on March 31, 1983, after the close of the filing period for the March 1983 simultaneous oil and gas lease drawing, i.e., March 21, 1983. BLM states that with respect to the March 1983 and subsequent filing periods, the Wyoming State Office, BLM, had instituted a policy to allow applicants an opportunity to correct certain errors in filing fees. This policy was enunciated in a March 17, 1983, memorandum (BLM's Exh. 4), which states in relevant part:

> Where an applicant submits an application(s) with insufficient or defective fees and notifies us in writing before the close of the filing period and submits sufficient moneys to cover the deficiency before the close of the filing period, we will accept the extra moneys and apply them to the fees.
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> We will not notify an applicant, on our initiative, of a defect nor will we check an application or remittance on request of an applicant. Identification and correction of an error involving an insufficient remittance is entirely the responsibility of the applicant and must be accomplished before the close of the filing period.

1/ The record shows that appellant had stopped payment prior to his Mar. 29 conversation with a BLM employee. A debit voucher executed on Mar. 30, 1983, by American National Bank of Cheyenne, Wyoming, states that the U.S. Treasury account, to which appellant's check had originally been credited, was being debited the same amount, because the check had been returned "Payment Stopped." Moreover, the face of the check indicates that it was returned from the Dade Savings & Loan Association on Mar. 28, 1983, the day prior to the conversation. Thus, appellant could not have relied on the statement by the BLM employee when stopping payment on his check.

2/ Appellant also submitted a canceled check payable to BLM, in the amount of $10, which presumably covered the service charge levied by BLM on the uncollectible remittance.

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> The only exception to this general policy is an uncollectible remittance (43 CFR 3112.2-2(c) [(1982)]). An uncollectible remittance supersedes errors specified in 43 CFR 3112.5(a)(3), (5), and (6) [(1982)]. 3/ [Emphasis in original.]

BLM concludes that appellant did not contact the State Office about substituting a postal money order "until long after the filing period" and that, in any case, his check constituted an uncollectible remittance.

[1] We recently dealt with the question of an uncollectible remittance in Marceann Killian, 79 IBLA 105 (1984). We stated in Killian that the applicable regulation, 43 CFR 3112.2-2 (1982), clearly provided that simultaneous oil and gas lease applications shall be accompanied by appropriate filing fees ($75 per parcel) and that submission of an uncollectible remittance shall result in disqualification of all filings covered by it and shall, despite such disqualification, bar participation in future drawings until paid. This regulation is currently codified, without significant change, at 43 CFR 3112.2-2 (48 FR 33678-79 (July 22, 1983)). As noted in Killian, it has long been Departmental practice to disqualify an application when the filing fee remittance is uncollectible, with the only exception being cases where the bank's refusal to honor a check has been shown to be the bank's error. Marceann Killian, supra at 107. The requirement that an applicant submit a collectible remittance with a lease application is a matter of substantive importance because "if applicants were not required to submit a collectible remittance at the outset, BLM could be continually faced with bad checks that are only paid if the applicant received priority on a desirable parcel." Id. at 107-08.

The regulations in effect at the time of the drawings in Killian and the present case also provided that applications would be examined prior to selection and that an application, together with the filing fee, would be returned to the applicant as unacceptable in part where it was accompanied by an unacceptable remittance or insufficient filing fees. See 43 CFR 3112.5(a) (1982). 4/ The March 17, 1983, memorandum cited by BLM in its answer appears

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3/ These errors relate to an application accompanied by an unacceptable remittance or insufficient filing fees, filing without a parcel number or an incorrect parcel number, and filing for a parcel withdrawn by BLM. 43 CFR 3112.5(a) (1982) provided that, in such circumstances, the application should be returned to the applicant prior to the drawing, together with the filing fee.

4/ The current regulation, 43 CFR 3112.3(a) (48 FR 33679 (July 22, 1983) as amended at 49 FR 2113 (Jan. 18, 1984)), similarly provides that an application will be considered unacceptable where it is received with an insufficient fee. Under our analysis in Shaw Resources, Inc., 79 IBLA 153, 91 I.D. 122 (1984), an applicant in such circumstances would be entitled to the return of his filing fees, minus a $75 processing fee, even where the application is included in a drawing and subsequently rejected. On the other hand, we conclude that submission of an uncollectible remittance is comparable to those deficiencies which properly result in rejection of an application after a

to have been an attempt by BLM to modify this regulation. That memorandum allows an applicant to correct any deficiency in his remittance, on his own motion, prior to the close of the filing period, and, thus, avoid return of his application as unacceptable. Nevertheless, the present case does not involve a deficient remittance or one which is unacceptable on its face. 5/ Rather, the present case involves an uncollectible remittance, i.e., one which was found acceptable on its face but not honored by the drawee bank upon presentation.

In the case of uncollectible remittances, the regulations are quite clear as to the result--disqualification of the application and a bar from participation in future drawings until the debt is paid. Appellant seeks to avoid this result by arguing that he notified BLM that he intended to stop payment on the check submitted with his application and to substitute a postal money order, and that he subsequently did so. This money order was received on March 31, 1983. The date of receipt was clearly after the close of the filing period for the March 1983 drawing, i.e., March 21, 1983, the 15th working day after the first working day of March 1983. See 43 CFR 3112.1-2 (1982). The only payment which was submitted within the filing period was the uncollectible remittance. We need not consider the question of whether, if the postal money order had been received by BLM prior to March 21, 1983, the date of closing of the filing period, it could be deemed to have "accompanied" appellant's lease application in accordance with 43 CFR 3112.2-2(a) (1982). We conclude that BLM properly invoked the provisions of 43 CFR 3112.2-2(c) (1982). 6/

It is suggested by appellant that his postal money order, received after the close of the filing period but prior to the drawing, should be treated as curing the defect in his application created by the stop payment order. Under the simultaneous leasing system, all qualified applications submitted within the filing period are deemed to have been filed simultaneously. The first-priority applicant is then selected from this pool of qualified applicants by random selection. However, the qualifications of that applicant, as well as the other applicants, must have been established during the time for simultaneous filing. See Simon A. Rife,

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fn. 4 (continued)
drawing and retention of all of the filing fees. It is based on a regulatory requirement which is directly related to the Department's ability to police the simultaneous system to prevent fraud or abuse. Those who fail to observe it properly suffer the consequences of their failure to comply. See Shaw Resources, Inc., supra at 177-78, 91 I.D. at 135-36.

5/ E.g., an unsigned check or a remittance payable in foreign currency.

6/ Moreover, in Marceann Killian, supra at 108 n.5, we stated:

"We note that by memorandum dated February 10, 1984, and entitled Treatment of Simultaneous Oil and Gas (SOG) Applications with Uncollectible Filing Fees, the Director of BLM directs the Wyoming State Director to handle applications with uncollectible remittances under 43 CFR 3112.3(c), 48 FR 33679 (July 22, 1983), as though they had been received without any fee and states an intention to amend at a future date "the costly punative [sic] procedures at 43 CFR 3112.2-2." Until the regulation is amended, however, we cannot ignore it. United States v. Nixon, 418 U.S. 683, 696 (1974)."

56 IBLA 378 (1981), appeal dismissed, Rife v. Department of the Interior, Civ. No. C81-0318 (D. Wyo. 1982). In order to be considered qualified, an applicant must have complied with all mandatory regulations. Sorenson v. Andrus, 456 F. Supp. 499 (D. Wyo. 1978). An applicant permitted to cure a deficiency in his application, so as to establish his qualifications after the close of the filing period, could not properly be considered to have filed in a timely manner and, thus, be entitled to a lease under the statute. Moreover, to permit an applicant to cure would infringe on the rights of the other participants who were qualified at the close of the filing period. Finally, to permit applicants to cure after the filing period, even up until the moment of the drawing, would impair the efficient administration of the simultaneous leasing system, especially in its current automated form, and, thus, delay prompt issuance of leases, from which the Government and the public, alike, benefit. See generally 43 CFR 1821.2-2(g). Thus, we conclude that appellant was not entitled to substitute a collectible remittance after the March 1983 filing period but prior to the drawing so as to counteract the requirements of 43 CFR 3112.2-2(a) (1982), and the effect of submitting an uncollectible remittance with his application.

We have no reason to doubt that appellant fully intended, after placing the stop payment, to substitute a collectible remittance in payment of his filing fees. However, his placing a stop order on his remittance, making it uncollectible, and his tardiness in substituting another payment causes him to run afoul of the regulations. We conclude that BLM properly disqualified appellant's simultaneous oil and gas lease application and barred his participation in future drawings until the debt, represented by his filing fees (plus a $10 service charge), was paid. 7/ We note that, as this debt has apparently been satisfied, appellant is no longer barred from participation.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

R. W. Mullen
Administrative Judge

We concur:

Gail M. Frazier
Administrative Judge

Bruce R. Harris
Administrative Judge

7/ It might be suggested that the United States did not earn this debt because appellant's application was disqualified prior to the "selection" in the March 1983 drawing. See Marceann Killian, supra at 107. However, BLM had processed the application and attempted to collect on appellant's check. See Shaw Resources, Inc., supra at 161-63, 91 I.D. at 126-27. Moreover, 43 CFR 3112.2-2 (1982) does not distinguish a remittance found to be uncollectible prior to a drawing from a remittance found to be uncollectible after a drawing. Both constitute a debt to the United States.